IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 4TH JANUARY 2007 / 14TH PAUSHA 1928

WP(C).No. 33563 of 2006(R)

PETITIONER:

N.PRAKASH,
P.S. TO JUDGE,
(UNDER SUSPENSION),
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.N.PRAKASH(PARTY IN PERSON)

RESPONDENTS:

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1. THE HIGH COURT OF KERALA,
ERNAKULAM, REP. BY ITS REGISTRAR GENERAL.

2. THE REGISTRAR GENERAL,
HIGH COURT OF KERALA,
ERNAKULAM.

3. THE ADDITIONAL DIRECTOR,
KERALA JUDICIAL ACADEMY,
OLD HIGH COURT BUILDINGS,
ERNAKULAM.

4. SMT.T.R.REHNA,
SHORTHAND WRITER GR.II,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.KRB.KAIMAL (SR.)
SRI.B.UNNIKRISHNA KAIMAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.33563/2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRUE COPY OF ORDER NO.R17/2004(SS)R.13/2006(SS) DATED 7.4.2006 ISSUED BY THE 2ND RESPONDENT.
EXT.P2	TRUE COPY OF ORDER NO.R.17/2004(SS)/A1-5102/2005 DTD.10.4.2006 ISSUED BY THE 2ND RESPONDENT.
EXT.P3	TRUE COPY OF MEMO OF CHARGES AND STATEMENT OF ALLEGATIONS DTD.3.6.2006.
EXT.P4	TRUE COPY OF OFFICIAL MEMORANDUM BEARING NO. R.17/2004(SS)A1-5102/2005 DTD.29.6.2006.
EXT.P5	TRUE COPY OF THE JUDGMENT IN W.P.(C)24571/2006 DTD.25.9.2006.
EXT.P6	TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE RESPONDENTS 1 AND 2 DTD.19.10.06.
EXT.P7	TRUE COPY OF THE PETITION FILED BY THE PETITIONER BEFORE THE THRID RESPONDENT DTD.19.10.2006.
EXT.P8	TRUE COPY OF ORDER DTD.3.11.2006 PASSED BY THE THIRD RESPONDENT.
EXT.P9	TRUE COPY OF THE JUDGMENT IN W.P.(C)29025/2006 DTD.14.11.2006.
EXT.P10	TRUE COPY FO THE CHEQUE ISSUED BY THE PETITIONER TO THE 4TH RESPONDENT DTD.25.7.2005.
EXT.P11	TRUE COPY OF CHEQUE DTD.2.2.2006 SUBMITTED BY THE 4TH RESPONDENT TO THE SBI SHANMUGHAM ROAD BRANCH.
EXT.P12	TRUE COPY OF M.P.NO.913/2006 FILED BY THE PETITIOENR BEFORE THE HON'BLE ADDITIONAL CHIEF JUDICIAL MAGISTRATE'S COURT, ERNAKULAM.
EXT.P13	TRUE COPY OF M.P.NO.5724/2006 FILED BY THE PETITIONER'S BEFORE THE LEARNED ADDITIONAL CHIEF JUDICIAL MAGIS-TRATE'S COURT, ERNAKULAM.
EXT.P14	TRUE COPY OF MEMO OF CHARGES NO.R.13/2006(SS)A1-5102/2005 DTD.11.12.2006.

EXT.P15 TRUE COPY OF ORDER NO.R.13/2006(SS)A1-5102/2005 DTD.11.12.2006.

EXT.P16 TRUE COPY OF THE PETITION FILED BY THE PETITIONER ON 18.12.2006 BEFORE THE SECOND RESPONDENT.

TRUE COPY

P.A.TO JUDGE

K.K.DENESAN, J

W.P.(C)NO. 33563 of 2006

Dated this the 4th day of January, 2007

JUDGMENT

The reliefs prayed for in this writ petition are the following:

> 1) issue a writ of certiorari or any other appropriate writs, directions or orders quashing Ext.P14.
>
> 2)issue a writ of mandamus or any other appropriate writs, directions or orders commanding the third respondent to complete the enquiry into the allegations of misconduct against the petitioner as per Ext.P1 not taking into account Ext.P14.
>
> 3) issue a writ of mandamus or any other appropriate writs, directions or orders commanding respondents 1 and 2 to pass final orders on Ext.P6 without taking into account Ext.P14.

2. I have heard the petitioner who argued his case as party in person and Sri.KRB Kaimal, Senior Advocate appearing for respondents 1 to 3. In the nature of the order I propose to pass, it is not necessary to issue notice to respondent No.4.

3. The grievance of the petitioner is against that part of Ext.P14 which inter alia says that the petitioner may submit his written statement of defence, if any, to

Sri.K.A.Abraham, Additional Director of the Kerala Judicial Academy who has been appointed the Enquiry Officer as per High Court proceedings dated 11.12.2006 to conduct enquiry in the disciplinary proceedings against him. One other ground, which makes the petitioner feels aggrieved, is that his request for supply of documents in order to facilitate him to submit the written statement in reply to Ext.P14 has not been allowed. It is submitted by the petitioner that he had filed Ext.P6 representation requesting to revoke the order of suspension and to reinstate him in service pending disciplinary proceedings initiated pursuant to orders passed in R.17/2004 (SS/R/13/2006(SS) and the memo of charges issued in those proceedings as also the connected proceedings. A domestic enquiry has been ordered in respect of the charges framed against the petitioner in those proceedings. The order of suspension referred to above was passed in connection with the said proceedings. During the pendency of the said proceedings, Ext.P14 memo of charges has been issued to the petitioner. Under

the circumstances, he has filed this writ petition seeking to set aside Ext.P14 and to grant attendant reliefs.

4. Senior Advocate appearing for respondents 1 to 3 submits that the sentence contained in Ext.P14, which is assailed as objectionable by the petitioner, can be deleted and the petitioner can be directed to file his written statement of defence against the charges framed against him as per Ext.P14 and the statement of allegations attached to the memo of charge before the disciplinary authority, namely, the second respondent who will consider the same in accordance with law and with due application of mind before decision to hold or not to hold a formal enquiry is taken. Senior Advocate further submits that the petitioner will be permitted either to peruse the relevant records and take extracts therefrom or he will be supplied with true copies of the records or documents he is entitled to get in the facts and circumstances of the case and in accordance with the rules.

5. The petitioner has submitted Ext.P16 representation dated 18.12.2006 requesting to permit him to take extracts from the complaints dated 20.3.2006 and

6.4.2006 filed by the 4th respondent and relevant extracts from the report of the Registrar (Vigilance) in the enquiry conducted pursuant to the above mentioned complaints. Senior counsel further submits that the Enquiry Officer appointed in connection with the memo of charges first issued to the petitioner will commence the examination of witnesses without delay and complete the enquiry as expeditiously as possible, provided the petitioner co-operates with the conduct of the enquiry with right earnestness.

6. The petitioner submits that various contentions he has urged in this writ petition against Ext.P14 memo of charges including the contention that proceedings initiated against Ext.P14 are illegal on the ground of subjudice etc. may be considered in this writ petition. However, I do not consider it necessary to examine those contentions at this stage. I need only say that the petitioner will be entitled to raise all factual and legal contentions he is entitled to raise, in accordance with law, in his written statement of defence and that the contentions which he

may raise will be considered by the appropriate authority, in accordance with law, in the proceedings pending before the respondents. It would be too early for this Court to go into the merits of those contentions and express any final opinion as it is likely to prejudice the parties or at least one of the parties.

7. The writ petition is accordingly disposed of deleting that portion of Ext.P14 which reads: "to Sri.K.Abraham Mathew, Additional Director of the Kerala Judicial Academy, who has been appointed the Enquiry Officer as per High Court Proceedings of even number and date to conduct enquiry in the disciplinary proceedings against you".

8. It will be open to the petitioner to submit his written statement of defence before the second respondent for appropriate consideration. He will be entitled to avail the opportunity to peruse the records and take extracts from such records or documents as are permissible or in the alternative to be supplied with copies of the documents. In addition to Ext.P16 submission already made, the petitioner shall file one more

submission which should clearly specify the records or documents he would like to peruse or to get copies thereof. This shall be done within one week from today. Upon receipt of that submission, the disciplinary authority shall apply his mind and decide whether the petitioner can be permitted to take extracts from all those documents or he can be supplied with all those documents. The petitioner shall be informed of the date and venue where he should be present for the purpose of perusal of documents and taking extracts from them unless the disciplinary authority feels that copies of the relevant documents can be supplied to him. It is open to him to request the second respondent to grant such time as is reasonably required to submit his written statement of defence against the charge memo after availing the opportunity to get the relevant documents or extracts. If the petitioner submits the written statement of defence within the time permitted, the second respondent shall consider whether a formal enquiry need be conducted into the charges and shall also consider in that process as to who should be appointed as the enquiry officer in case the

decision is to conduct a formal enquiry following the procedure laid down in Rule 15 of KCS(CC&A) Rules 1960. If such a decision is taken, the same shall be communicated to the petitioner without delay.

9. Ext.P6 representation shall be considered and appropriate decision taken in accordance with law. The petitioner shall be informed of the result within three weeks from the date of receipt of a copy of this judgment.

The writ petition is disposed of with the above directions.

K.K.DENESAN, JUDGE

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